



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 20, 1996

Mr. Kevin W. Kapitan  
Assistant City Attorney  
Police Legal Advisor  
City of Fort Worth  
350 West Belknap  
Fort Worth, Texas 76102

OR96-2150

Dear Mr. Kapitan:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 101850.

The City of Fort Worth (the "city") received a request for information relating to a Fort Worth Police Department Internal Affairs Division ("FWPD/IAD") investigation which arose out of an incident involving the requestor.<sup>1</sup> You state the requestor asked for information contained in the FWPD/IAD file No. 95-057M, and that no such file exists, but you have submitted as "Exhibit B" the file pertaining to the requestor's complaints, file No. 96-057M. In addition, you have submitted the file nearest in number to that requested, No. 95-057C, attached as "Exhibit C."<sup>2</sup> The city has released part of the information requested, but you contend that the requested information contained in 96-057M is excepted from disclosure in its entirety under sections 552.101, 552.102, 552.108, 552.111, 552.117, and 552.119 of the Government Code. We will first address your argument under section 552.101.

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<sup>1</sup>This office issued a previous ruling addressing the internal affairs files relating to the complaints by Mr. Riley Cantrell, OR96-775, in which we stated "(b)ecause the citizen's allegations have not yet been sustained, we conclude that, pursuant to section 143.089, the city must withhold the requested internal affairs file at this time." Because the investigation is now concluded, we are readdressing the city's arguments.

<sup>2</sup>With regard to the requestor's seeking file No. 95-057M, which doesn't exist, as opposed to file No. 96-057M, which relates to his complaints, we would note that a governmental body must make a good faith effort to relate a request for information to information which it holds. Open Records Decision No. 561 (1990). Given that file No. 96-057M relates to the incidents involving the requestor, and that file No. 95-057C, attached as Exhibit C, is totally unrelated, we are limiting our opinion to the applicability of the Act to the information contained in file No. 96-057M.

The city asserts that the requested information is confidential under section 552.101 of the Government Code in connection with section 143.089(g) of the Local Government Code. For those municipalities that have adopted the civil service provisions of chapter 143 of the Local Government Code, section 143.089 contemplates two different types of personnel files for police officers and fire fighters: one that a police or fire department is required to maintain as part of a civil service file, and one that the department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court determined that section 143.089(g) made confidential the records maintained in a police department's internal personnel file relating to complaints against a police officer in which the police department took no disciplinary action. *City of San Antonio*, 851 S.W.2d at 949. A request for information contained within the internal file must be referred to the civil service director or his designee. Local Gov't Code § 143.089(g); see *City of San Antonio*, 851 S.W.2d at 949. Thus, if any of the requested documents are properly held only within the department's internal file, the request for this information must be referred to the civil service director or his designee.

In cases in which a fire or police department takes disciplinary action against a fire fighter or police officer, section 143.089(a)(2) requires the department to place records relating to the investigation and disciplinary action in the personnel files maintained under section 143.089(a). Such records are not confidential pursuant to section 143.089(g) and must be released as required by law. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6; *City of San Antonio*, 851 S.W.2d at 948.

In the case at hand, you indicate all the requested information is located in FWPD/IAD file No. 96-057M, an internal investigation file. This information is confidential pursuant to section 143.089(g), unless disciplinary action was taken by the city against the officers under investigation, in which case section 143.089(a)(2) requires the city to place records relating to the investigation and disciplinary action in the personnel files maintained by the civil director under section 143.089(a). Information in 143.089(a) files may only be withheld if another provision of chapter 552 of the Government Code excepts this information from disclosure.

Assuming the records are not confidential under 143.089(g), you next argue that the information is excepted from disclosure under section 552.108 as the product of extensive police investigations. You additionally assert that release could subject witnesses to intimidation and harassment and would clearly harm the prospects of future cooperation by such witnesses, as well as others. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108. Where no criminal investigation or prosecution results from an investigation of a police officer for alleged misconduct, section 552.108 is inapplicable. See *Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied); Open Records Decision No. 350 (1982). Apparently, the files submitted did not involve an investigation that resulted in a criminal prosecution. We therefore conclude that the city may not withhold those files from public disclosure based on section 552.108 of the Government Code.

You also assert that the requested information contains a "plethora of internal memoranda and correspondence pertaining to the investigation contained therein," and is therefore excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. As the documents you seek to withhold relate only to internal administrative or personnel matters, and not to matters of policy, they may not be withheld pursuant to section 552.111.

You claim that sections 552.102 and 552.117 of the Government Code except from required public disclosure some of the information contained in the civil service files. Section 552.102 excepts "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 protects information only if its release would cause an invasion of privacy under the test articulated for section 552.101 by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). See *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Generally, the public has a legitimate interest in the job qualifications and job performance of public employees. Open Records Decision Nos. 470 (1987), 467 (1987). In addition, the final determination of a complaint against a police officer and letters advising him of disciplinary action are not excepted by section 552.102. Open Records Decision No. 350 (1982). Similarly, information regarding complaints filed by citizens and their resolution by the police department is of legitimate concern to the public and, therefore, not properly excepted by section 552.102. Open Records Decision No. 418 (1984). We have examined the information submitted to us for review and conclude that it is of legitimate concern to the public and is not of a highly embarrassing or intimate nature.

We next address your contention that section 552.117 of the Government Code protects the home addresses and home telephone numbers of the police officers at issue here. We agree. Section 552.117(2) excepts from required public disclosure information relating to the home address, home telephone number and social security number of a peace officer as defined by Article 2.12, Code of Criminal Procedure. Accordingly, we conclude that the city must withhold the requested home addresses and telephone numbers of the licensed peace officers.

Finally, you assert section 552.119 of the Government Code protects some of the requested information. Section 552.119(a) excepts from required public disclosure "a photograph

that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure," with certain exceptions not relevant here. A photograph that depicts a peace officer may be released only if the peace officer gives written consent to the disclosure. Gov't Code § 552.119(b). Thus, unless the officers have given written consent to disclosure, you must withhold any photographs of the officers contained in the requested information.

In conclusion, the requested information located in FWPD/IAD file No. 96-057M, an internal investigation file, is confidential pursuant to section 143.089(g), and the request for this information must be referred to the civil service director or his designee, with the following exceptions. Information pertaining to the investigation of and disciplinary actions taken against any officers must be placed in those officers' personnel files maintained by the civil service director under section 143.089(a) and must be released, with photographs of any officers, and information containing the home addresses, telephone numbers, or social security numbers of the affected officers redacted.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID# 101850

Enclosures: Submitted documents

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